

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CRIMINAL NO. 1:06CR31**

**UNITED STATES OF AMERICA**

**vs.**

**MICHAEL DALE HONEYCUTT**

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**ORDER**

**THIS MATTER** is before the Court on Defendant's *pro se* "Notice of Appeal (in the Alternative)," with an attached "Out of Time Notice of Appeal," and his motion for the appointment of appellate counsel. For the reasons stated below, the "Notice of Appeal (in the Alternative)" will be construed by the Court as a motion to extend the time for filing an appeal.<sup>1</sup>

The Rules of Appellate Procedure provide that in a criminal case,

[u]pon a finding of excusable neglect or good cause, the district court may . . . extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed [by this Rule].

**Fed. R. App. P. 4(b)(4).**

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<sup>1</sup> The Court notes that the Clerk has filed and transmitted the "Out of Time Notice of Appeal" to the Fourth Circuit Court of Appeals.

On January 4, 2007, this Court sentenced the Defendant to a term of 168 months imprisonment for violations of the Controlled Substances Act. **See Judgment in a Criminal Case, filed January 23, 2007.** No notice of appeal was filed.

The Defendant states that he instructed his attorney to file a notice of appeal; but despite repeated inquiries to his attorney that have gone unanswered, no appeal has been filed.

Although the Defendant has presented good cause for the failure to timely file his notice, he does so outside the 30-day period provided by Rule 4. Therefore, the Court has no jurisdiction to extend the time for this Defendant to file his notice of appeal.

**IT IS, THEREFORE, ORDERED** that the Defendant's "Notice of Appeal (in the Alternative)," construed as a motion to extend time for filing appeal, is **DENIED** for lack of jurisdiction.

Should the Fourth Circuit entertain Defendant's "Out of Time Notice of Appeal," heretofore transmitted by this Court's Clerk, the Defendant's motion for the appointment of appellate counsel is hereby respectfully referred to that Court.

Signed: January 18, 2008

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

